

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF ADMINISTRATION
OFFICE OF MUNICIPAL BOUNDARY ADJUSTMENTS

In the Matter of the Petition for Acceptance
of Annexation, Exclusion from Incorporation
and Objection to Incorporation, A-6791
Mitsch/Weber (November 27, 2002).

ORDER ON MOTION

On December 2, 2002, landowners Gary & Wanda Mitsch and Jerome & Terri Weber filed their Petition for Acceptance of Annexation, Exclusion from Incorporation and Objection to Incorporation with the Office of Strategic and Long-Range Planning, Boundary Adjustments Division. The Petition requested an order accepting and finalizing the annexation of their lands by ordinance. Annexation had been approved by an ordinance of the City of Rogers. As part of the petition, they also requested that their lands be excluded from the area proposed for incorporation by the Town of Hassan. Finally, they requested that the matter be assigned to the Office of Administrative Hearings for further proceedings.

On January 30, 2003, the Acting Director of the Office of Strategic and Long-Range Planning delegated the Petition, along with other matters relating to Hassan Township and the City of Rogers, to the Office of Administrative Hearings. The delegation, made pursuant to Minn. Stat. sec. 414.12, subd. 2 (2002) included authority to hold hearings and issue orders, including final orders, in the delegated matters.

On March 27, 2003, a status conference was held before the undersigned Administrative Law Judge. As a result of that status conference, all matters relating to the proposed incorporation and proposed annexations by ordinance were referred to the Honorable Beverly Jones Heydinger for mediation. However, the First Prehearing Order issued by the undersigned Administrative Law Judge on March 31 specified that landowners Mitsch and Weber could file a motion with the undersigned Administrative Law Judge requesting that they be allowed to withdraw from the mediation and that their petitions be ruled upon. That Order specified that such a motion could not be filed until at least 30 days had passed from the date of the First Prehearing Order.

On May 27, 2003, landowners Mitsch and Weber did file a motion requesting that their lands be excluded from Hassan Township's Incorporation Petition so that they could proceed with the Annexation Petition. Landowners' Notice of Motion and Motion were served upon all the parties in the case, including the attorney for Hassan Township and the Chair of the Hassan Township Board. No objections have been received, and more than ten working days have now passed.

On June 9, 2003, the Hassan Town Board voted to exclude the Mitsch and Weber properties from the town's Incorporation Petition.

Based upon all the files and proceedings herein, and for reasons set forth in the attached Memorandum, which is incorporated herein, the Administrative Law Judge makes the following:

ORDER

1. That the lands presently owned by Gary & Wanda Mitsch and Terry Maas Weber and Jerome Weber, are hereby excluded from the area proposed for incorporation by the Town of Hassan. These lands are:

That part of the Northeast Quarter of the Southwest Quarter of Section 22, Township 120, Range 23, lying West of the East 311.97 feet thereof, Hennepin County, Minnesota.

That part of the East Half of the Northwest Quarter of the Southwest Quarter of Section 22, Township 120, Range 23, East of the West 10 acres thereof Hennepin County, Minnesota.

The East 311.97 feet of the Northeast Quarter of the Southwest Quarter of Section 22, Township 120, Range 23, Hennepin County, Minnesota.

2. That the "stay" of annexation proceedings imposed by Minn. Stat. § 414.033, subd. 6, is hereby lifted with respect to the Mitsch/Weber properties identified above.

3. That the Petition for Acceptance of Annexation, Exclusion from Incorporation and Objection to Incorporation is returned to the Municipal Boundary Adjustment section of the Department of Administration for further actions consistent with this Order.

Dated this 1st day of July, 2003.

_ /s/ Allan W. Klein _____
ALLAN W. KLEIN
Administrative Law Judge

MEMORANDUM

Minn. Stat. § 414.033 sets forth the procedure for a municipality to annex abutting land in an unincorporated area. It provides a variety of procedural steps for the municipality to take including the adoption of an ordinance declaring the land to be annexed. In March of 2000, landowners Mitsch and Weber requested the City of Rogers to annex the subject property. The City did adopt an annexation ordinance in November of 2002.

Minn. Stat. § 414.02 sets forth the procedure for municipal incorporation. It provides that a resolution of the town board may be submitted to the Director of the Office of Strategic and Long-Range Planning. Following a hearing, the Director may order the incorporation, deny the incorporation, alter the boundaries by increasing or decreasing the area to be incorporated or deny the incorporation or a part thereof if any lands would be better served by annexation to an adjacent municipality. Pursuant to Minn. Stat. § 414.02, Hassan Township filed an Incorporation Petition with the Minnesota Office of Strategic and Long-Range Planning on October 17, 2002. The Petition included the lands owned by the Mitsches and the Webers.

Minn. Stat. § 414.033, subd. 6 provides that whenever a proceeding for annexation is initiated under § 414.033 and all or any part of the land is included in another boundary adjustment proceeding pending before the Director, no action on the proceeding for annexation shall be taken by the municipality, unless otherwise provided by an order of the Director, until final disposition has been made of the pending petition. In the case of the Mitsch and Weber properties, that means that the proposed incorporation effectively bars any further action on the annexation by ordinance proceeding until the incorporation is resolved. In this particular case, the mediated discussions have been progressing quite successfully, but the volume of detail that needs to be resolved has delayed adoption of any final resolution. While it is hoped that the mediation will result in a successful resolution, the precise timing is unknown. That leaves the Mitsch/Weber properties "up in the air".

The Mitsch/Weber properties abut the City of Rogers. Together, the properties total approximately 50 acres in size.

Both properties are better served by annexation to the City of Rogers than remaining a part of Hassan, regardless of whether or not Hassan becomes an incorporated city. Rogers has an operational wastewater treatment facility, and both the sewer system and the treatment facility have the capacity to incorporate flows that might come from the subject property. On February 27, 2002, the Rogers' City Engineer issued a report (see Christopherson Affidavit, Ex. D (sewer study)), reviewing how the City's sewer system could serve the subject properties. Hassan, on the other hand, is unsewered (with the exception of a small area served under a joint powers agreement with the City of Rogers) and there is no prospect that the Hassan will be sewered at any time in the near future unless service comes from the City of Rogers.

The City of Rogers has its own water supply system, consisting of three working wells, with a fourth under construction. There is a Rogers water main within several yards of the subject property, located just across 129th Avenue. The City's water system has adequate capacity to serve the subject property, both in terms of water storage and water delivery. Hassan, on the other hand, is served by private well systems. Again, at least for the subject property, it is more likely than not that any water service in the near future will come from the City of Rogers.

Finally, it should be noted that the Mitsches and Webers have entered into a purchase agreement with Town Center Development whereby Town Center would acquire the property and develop it. A condition of the sale is that annexation into the City of Rogers must be completed before closing.

I am exercising the authority granted by § 414.033, subd. 6 to lift the "stay" imposed by that subdivision to allow for further proceedings on the annexation of the subject property. I am altering the boundaries of the area proposed for incorporation by excluding the subject property because the subject property is better served by the City of Rogers, as provided for in Minn. Stat. § 414.02 subd. 3(d).

I am granting this Motion without an evidentiary hearing because of the voluminous material already in the files and the material in the Memorandum and Affidavit attached to the Motion. Furthermore, I have delayed ruling on this Motion in order to give Hassan Township plenty of time to object to it. No objection has been received from the Township, or any other party. Instead, on June 9, the Hassan Town Board voted to exclude this property from its Petition for Incorporation. Under all the circumstances, it is appropriate to grant the Motion.

A.W.K.